

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

MACA.No. 198 of 2015 ()

AGAINST THE AWARD IN OPMV 1046/2009 of ADDL. D.C. & SESSIONS COURT - IV
& ADDL. M.A.C.T., PATHANAMTHITTA DATED 29-08-2014

APPELLANT/ 3rd RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LIMITED,
ETTUMANOOR NOW REPRESENTED BY ITS MANAGER, REGIONAL OFFICE,
M.G. ROAD, KOCHI -11.

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS/PETITIONERS:

1. ANNAMMA N.T, PAMPAKOTTU HOUSE, UTHIMOODU P.O., MYLAPRA,
PATHANAMTHITTA DISTRICT. PIN 689320
2. JIMMY GEORGE, PAMPAKOTTU HOUSE, UTHIMOODU P.O., MYLAPRA,
PATHANAMTHITTA DISTRICT PIN 689 320

R1 & 2 BY ADV. SRI.T.K.BIJU (MANJINIKARA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 26-11-2015, ALONG WITH M.A.C.A. No.2351 OF 2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRA, JJ.**

.....
M.A.C.A.Nos.198 & 2351 OF 2015
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Dated this the 26th November, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

These appeals have been preferred by the rival contestants. M.A.CA.198 of 2015 has been preferred by the Insurance Company, seeking to scale down the extent of compensation awarded by the Tribunal in respect of the serious injuries sustained and the subsequent death of the deceased; whereas the award is stated as inadequate and hence sought to be enhanced at the instance of the claimants by way of M.A.C.A. 2351 of 2015.

2. We heard the learned Counsel for the Insurance company as well as the learned Counsel appearing for the claimants.

3. The accident was on 06.05.2008. The deceased was walking along the road when he was knocked down by an autorickshaw bearing No. KL.37/0249, owned, driven and insured

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by the respondents 1 to 3 before the Tribunal. Immediately, he was taken to the hospital because of serious injuries sustained and was being treated there. By virtue of the complexity of situation prevailing, the injured was taken to different hospitals and was undergoing treatment in all such hospitals, incurring huge expenditure. Finally, while availing treatment in the Amrita Hospital and Research Centre, he took his last breath on 19.07.2009. The loss in this regard was sought to be compensated by filing claim petition by the claimants.

4. The matter was contested only by the Insurance Company. No statutory ground of defence as to any violation of statutory/policy condition is seen established. The evidence adduced before the Tribunal only consisted of the documentary evidence adduced from the part of the claimants as Exts. A1 to A37. Based on the available materials on record, the Tribunal found that the accident was solely because of the negligence on the part of the driver of the vehicle and awarded a total compensation of Rs.8,99,784/- which was directed to be satisfied

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with interest at the rate of 9% per annum, fixing the liability upon the insurer of the vehicle by virtue of the valid coverage under the policy. This in turn is sought to be challenged by the concerned appellants in the above two appeals.

5. Mr. Mathews Jacob, the learned Sr. Counsel appearing for the insurance company submits that the Tribunal has reckoned a sum of Rs.5000/- as the notional monthly income, despite the fact that no evidence was adduced to prove the occupation or income of the deceased. Similarly, the multiplier adopted by the Tribunal in respect of the person, who was aged above 61 years was '9', which could only have been '7 ' as per the ruling rendered by the Supreme Court in **Sarla Varma vs. Delhi Transport Corporation [2009(6) SCC 121]**. It is also pointed out that a sum of Rs.One lakh has been awarded towards loss of consortium without noting the fact that the widow was aged 59 years. Reliance is sought to be placed on Ext. A37 'death certificate' which reveals the age of the deceased as 61 years.

6. The learned Counsel for the claimants submits that the

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age of the deceased as given in Ext. A37 death certificate was the age of the deceased as on the date of the death, which occurred on 19.07.2009. As a matter of fact, the accident was on 06.05.2008 and it was after one year and 49 days, that the injured succumbed to the injuries leading to the death occurred on 19.07.2009. As such, the deceased was actually below 60 years as on the date of the accident and as such, the multiplier adopted by the Tribunal does not require any modification. The learned Counsel also points out that the deceased was undergoing much adverse consequences by virtue of the nature of injuries, also suffering excruciating pain and such other ordeal. Despite the fact that the deceased was taken to as many as four different hospitals and the treatment given, his life could not be saved .

7. Even though there is a contention for the insurance Company that there was no material to connect the death with the injuries, this Court finds that the pleading raised by the Insurance Company in this regard was not sought to be

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substantiated by producing any material to discredit the available testimony. The nature and extent of injuries suffered and different spells of hospitalisation in different hospitals clearly connect the the death to the accident occurred on 06.05.2008 and as such, the contention raised by the Insurance Company in this regard is repelled.

8. With regard to the challenge raised against the appropriate multiplier, with reference to the actual age of the deceased, we find that the age of the deceased shown in Ext.A37 was the age 'as on the date of death' and as such, there was nothing wrong on the part of the Tribunal in having reckoned the multiplier as '9' to work out the compensation for loss of dependency. Though it is true that no evidence was adduced as to occupation or income of the deceased, there is no dispute as to the status of the deceased as a retired teacher. By virtue of the fact that the deceased was a teacher, it was very much possible for him to have taken tuition for several students and to have generated income to a sizable extent. This being the position,

the amount of Rs.5000/- reckoned by the Tribunal can never be termed as arbitrary or illegal in any manner. Similarly, with regard to the extent of compensation awarded towards loss of consortium, we are very much aware of the decision of the Apex Court as given in **Rajesh vs. Rajbir Singh** [2013 (3) KLT 89 (SC)] granting a sum of Rs.one lakh towards the loss of consortium and another sum of Rs.one lakh in respect of loss of love and affection. It is also true that a Division Bench of this Court had occasion to consider the actual extent payable under the above heads as per the decision reported in **2014 (1) KLT 10 (Valsamma vs. Binu Jose)**; holding that the extent of compensation payable under these two heads very much depend upon the age of the deceased and also the age of the claimant. But coming to the instant case, it is to be seen that the Tribunal has awarded only sum of Rs.30000/- towards the loss of love and affection. Under such circumstance, even if the amount awarded towards loss of consortium is to be scaled down to an appropriate extent, necessary enhancement has to be made with reference to

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the head-love and affection, which stands inadequately compensated. Taking the totality of the facts and circumstances into account, this Court finds that there is no merit in the appeals filed by both the sides. No variation is required in the award passed by the Tribunal. We find that the award passed by the Tribunal is a 'just' award under Section 168 of the M.V.Act. Interference is declined. Both the appeals are dismissed.

**P.R. RAMACHANDRA MENON,
JUDGE**

**ANIL K. NARENDRA,
JUDGE**

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